070-2
A pregnant woman with an unborn child is eligible for aid if the unborn child, if born, would have been AFDC (now CalWORKs) eligible; and (1) the mother's pregnancy has reached the three-month period immediately before the month of anticipated birth; or (2) the pregnant woman is under the age of 19 and has not obtained a high school diploma or its equivalent. (§44-209.23, effective September 1, 1996)

070-2A
Otherwise eligible pregnant-only teens who apply on or after September 1, 1996, who subsequently reach the age of 19 or obtain a high school diploma or its equivalent, and are not in their third trimester of pregnancy are not eligible for CalWORKs (formerly AFDC) or the pregnancy special need payment. (All-County Letter No. 96-45, August 29, 1996 interpreting §§44-209.23 and 44-211.632) Eligibility resumes at the third trimester of pregnancy if the pregnant woman is otherwise eligible for CalWORKs. (All-County Information Notice I-09-97, February 21, 1997)

070-3
A pregnant woman who has been aided for the last three months of her pregnancy and gives birth prior to the anticipated delivery date, may be eligible for retroactive benefits extending back three months prior to the actual month of the baby's birth. (§44-209.234)

070-4
As of January 1, 1999 state law provides that for purposes of determining eligibility under this chapter, and for computing the amount of aid payment under W&IC §11450, "families shall be grouped into assistance units." (W&IC §11450.16(a), effective January 1, 1999)

070-5
The Kinship Guardian Assistance Payment (Kin-GAP) is a child-only cash aid program for children with court dependencies who are placed with relatives who assume guardianship and opt to exit the foster care system. (All-County Letter (ACL) No. 99-92, October 25, 1999)

The CDSS was given the authority to initially implement the Kin-GAP legislation (established by Senate Bill No. 1901, Ch. 1055, Statutes of 1998 and modified by Assembly Bill No. 1111, Ch. 147, Statutes of 1999) by ACL, effective January 1, 2000. (ACL No. 99-97, November 4, 1999)

070-6
To be eligible to receive a Kin-GAP payment, there must be an eligible child who lived with a relative for at least 12 consecutive months. There must be a relative guardianship established per W&IC §366.26. Juvenile court dependency for the child must have been dismissed per W&IC §366.3 after January 1, 2000. (All-County Letter (ACL) No. 99-97, November 4, 1999; ACL No. 00-09, January 10, 2000; §§90-015.121, .131, .132, effective July 1, 2000)

070-7
Each Kin-GAP child is in his or her own AU, even if there is a sibling or a needy caretaker relative living in the same home. (All-County Letter (ACL No. 99-97, November 4, 1999; §90-105.31, effective July 10, 2000)

The Kin-GAP recipient is excluded by law from receipt of CalWORKs (W&IC §11450(j)) and the income and aid payment of the Kin-GAP recipient is not considered available to CalWORKs applicants and recipients. (W&IC §11371) The needy caretaker relative of the Kin-GAP recipient may be in his/her own one-person AU, or included in an AU with other eligible dependent children. (W&IC §11450.16(B); §82-820.22, effective July 1, 2000) These rules are effective January 1, 2000. (ACL No. 99-92, October 25, 1999)

070-8
Prior to July 10, 2000, the following rules applied in the Kin-GAP program:

Kin-GAP children must:

(1) Be current on immunizations.

(2) Meet school attendance requirements, if the child is 16 years old or older.

(3) Have a monthly report completed by the relative caregiver, when there is a change in income or eligibility. (§90-110.31, effective July 1 and repealed July 9, 2000)

(4) Participate in the Cal-Learn program if they become pregnant or have children of their own. (§90-110.1(i), effective July 1 and repealed July 9, 2000)

(All-County Letter (ACL) No. 00-09, January 10, 2000; ACL No. 00-70, November 13, 2000)

071-1A
"Applicants" shall include the following persons if living in the home, and shall be listed on the applicable Statement of Facts:

1. The applicant child.

2. Children who are siblings or half-siblings of the applicant child.

3. The parents of any child listed above.

4. A pregnant woman, in a one-person AU.

5. The caretaker relative, stepparent and second parent of an SSI/SSP child when aid is requested.

6. The caretaker relative, stepparent, and second parent of a child who is sanctioned by the GAIN program.

7. A senior parent.

8. The sponsor of an alien.

9. The spouse of persons mandatorily included in the filing unit.

(§40-118.1)

"Applicants" shall include optional persons if aid is requested for them. The county shall determine whether the appropriate individuals are included on the applicable Statement of Facts. The application, redetermination, request to add a person or request for restoration shall be denied if the applicant refuses to include on the application any individual listed above. (§§40-118.2 and .4)

071-2A
Every AU shall include at least one eligible child, or a pregnant woman, or the caretaker/relative of an SSI/SSP child or of a child receiving federal, state, or local foster care maintenance payments, or the relative of a child who has been sanctioned by GAIN.

The AU shall also include the following persons, if living in the home and eligible: the applicant child, any eligible sibling or half-sibling of the applicant child who meets the age requirement, and any parent of the child or the child's eligible siblings, except an alternatively sentenced parent.

(§82-820)

071-2B
Prior to July 1, 1998, state regulations provided that if the only eligible child in the AU is sanctioned by GAIN, aid shall be discontinued for that child and aid shall be continued for the remainder of the family. (§42-786.313, repealed effective July 1, 1998)

071-3
For exceptions to the mandatory inclusion requirements applicable to pregnant or parenting minors who are participants in the California Work Pays Demonstration Project, the rules in §89-201.5 govern. (Handbook §82-820.333)

071-4A
Every AU must include at least one eligible child or pregnant woman unless the only child is a Supplemental Security Income/State Supplemental Program recipient or receives federal, state, or local foster care maintenance payments, or is sanctioned by

GAIN. [Note that while GAIN was replaced by the Welfare-to-Work program on January 1, 1998, the regulation has not been modified as of December 1, 2002.] (§82-820.2)

071-5
The MFG child is eligible for and a recipient of aid, including special needs, and is included in the AU size for the MBSAC, but is not included in the AU size for purposes of determining the MAP. (§§44-314.2, .6)

071-7
Based on the CDSS distinction between a "sanction" and "penalty", the following rules apply:

1. Penalties occur, and the penalized person(s) is in the AU, when the parent(s) or caretaker relative fail to provide immunization documentation of nonschool-age children; the adult does not ensure regular school attendance of a child under 16, or the child is 16 or over and is not regularly attending school; the family grant is reduced 25% due to a custodial parent's failure to cooperate with the DA; the person has been found to have committed fraud; or the dependent child has failed to comply with work requirements.

2. Sanctions apply, and the sanctioned person is not in the AU, when the custodial parent or caretaker relative does not assign child support rights; the person is a fleeing felon or has violated a condition of probation or parole; the person is a drug felon; the adult has failed to comply with work requirements; or the person fails to participate in community service activities.

(All-County Information Notice No. I-09-98, February 9, 1998, Chart)

071-8
As of January 1, 1999, state law requires that every CalWORKs AU shall include at least one of each of the following:

(A) An eligible child;

(B) The caretaker relative of a child who would be eligible for CalWORKs except for the fact the child receives Supplemental Security Income(SSI) benefits or foster care payments under W&IC §11461.

An AU may also consist of a pregnant woman, eligible under W&IC §11450(c).

(W&IC §§11450.16 (b)(1) and (2), effective January 1, 1999)

Every AU shall include, in addition to the persons listed above, the "eligible parents of the eligible child and the eligible siblings, including half-siblings, of the eligible child when those persons reside in the same home as the eligible child." [Emphasis added] This rule does not apply to alternately sentenced offenders, living in the home of the

eligible child but considered absent parents. (W&IC §11450.16(c), effective January 1, 1999)

072-1A
In addition to those relatives who must be included in the AU, other eligible relatives living in the home may be included in the AU upon request of the applicant or recipient. At the time of application, redetermination, or at any other time the recipient informs the county of any additional relatives in the home, the county shall identify for the applicant or recipient which additional relatives in the home may be included in the AU, and the county shall advise the applicant or recipient of the effect of including or excluding such relative(s). This advice shall include a description of the AU composition which will result in the maximum aid to which the family is eligible. (§§82-820.3 and 82-828.1)

072-2
As of January 1, 1999, state law provides that the family comprising the CalWORKs AU has the option to include in the AU: the nonparent caretaker relative of the eligible child; the spouse of the parent of the eligible child; otherwise eligible nonsibling children in the care of the caretaker relative of the eligible child; and the alternately sentenced offender parent of the eligible child. (W&IC §11450.16(d), effective January 1, 1999)

073-2A
The father of an unborn child living in the home with the pregnant woman is to be excluded from the AU unless the father is the parent or caretaker relative of an eligible child. (§82-832.13)

073-3
A person who receives SSI/SSP, RRP, or AFDC-FC is excluded from the AU. (§82-832.1(e))

073-3A
A recipient of benefits under §1619(b) of the Social Security Act §42 United States Code §1382h(b) shall be considered an SSI recipient for purposes of the CalWORKs program. The §1619(b) recipient shall therefore be excluded from the AU, and the recipient's income and resources shall be treated the same as any other SSI recipient's. (All-County Letter No. 01-35, June 18, 2001; §§82-832.1(e) and 44-133.21)

073-4
After appropriate notice, documentation must be provided that all children in the AU who are not required to be enrolled in school have received all age appropriate immunizations. If there is no evidence of exemption from immunization requirements, then the needs of all parents or caretaker relatives in the AU shall not be considered in determining the AU's grant. (W&IC §11265.8(a); All-County Letter No. 97-70, October 28, 1997; §§40-105.4(c) and (g), effective July 1, 1998)

073-5

When immunization or school attendance documentation is required but not submitted, penalties for the parent(s) or caretaker relative (i.e., exclusion from the AU for purposes of eligibility determination and grant computation) are applied the first of the month following timely notice. (All-County Letter (ACL) No. 97-70, Attachment 8, October 28, 1997; §§40-105.7(g), 40-105.5(e), effective July 1, 1998)

Once verification of immunization or school attendance is submitted, the parent's or caretaker relative's needs are included in the AU effective the first of the month in which verification is received. (ACL No. 97-70, p.3; §§40-105.4(h), 40-105.5(g), effective July 1, 1998)

073-6
All children in an AU for whom school attendance is compulsory, i.e., ages six to 17, except those eligible for Cal-Learn, or subject to a county school attendance project (in Merced and San Diego counties), shall be required to attend school. (W&IC §11253.5(a); All-County Letter (ACL) No. 97-70, p.4, October 28, 1997; §§40-105.5(a) and (c), effective July 1, 1998)

Once informed of the attendance requirement, the recipient shall cooperate with the county in providing documentation of the child(ren)'s school attendance, when the county determines documentation is appropriate. (W&IC §§11253.5(b) and (c); §40-105.5(b), effective July 1, 1998)

If the county determines that an eligible child under the age of 16 is not regularly attending school, the needs of all adults in the AU shall not be considered in computing the grant for the AU, unless good cause exists. If the eligible child is over 16, and does not meet attendance requirements, that child's needs shall not be considered in computing the grant. (W&IC §§11253.5(d) and (e); ACL No. 97-70, p.4; §40-105.5(d), effective July 1, 1998)

073-6A
There is no penalty applied to the Kin-GAP AU when the Kin-GAP child lacks immunizations, or fails to attend school, and the child is under 16. (All-County Letter No. 01-64, September 10, 2001, Answer 27, interpreting §§40-105.4(g) and 40-105.5(d))

073-6B
A Kin-GAP child age 16 or over who fails to attend school remains aided, although the child receives no aid payment and the case becomes a zero basic grant case. (All-County Letter No. 01-64, September 10, 2000, Answer 5, interpreting §40-105.5)

073-7
The following individuals are excluded by law from the CalWORKs AU:

1. Persons fleeing to avoid prosecution, or custody and confinement after conviction, for a crime or attempt to commit a crime that is classified as a felony. The existence of an arrest warrant is presumed to be evidence of fleeing, which

can be rebutted if the individual can show he/she did not know that law enforcement was seeking him/her.

2. Persons violating a condition of probation or parole imposed under federal or state law, whether or not the initial offense was a felony.

(W&IC §11486.5(a); §82-832.19, amended and renumbered to §82-832.1(i) and (j) effective May 1, 1999, and then to §82-832.1(h) and (i), effective February 28, 2002)

As of January 1, 1998, "Fleeing to avoid prosecution, or custody and confinement after conviction" means a warrant for arrest has been issued; and "Violating a condition of probation or parole" means a warrant for a crime that violates a condition of probation or parole has been issued, or an order has been issued revoking probation or parole. (All-County Letter No. 97-65, p. 5, October 29, 1997)

073-8
Any person convicted of a felony that has an element related to the possession, use, or distribution of a controlled substance shall be ineligible for aid under CalWORKs. "Controlled substances" are those defined in 21 United States Code §802, or in Division 10 of the Health and Safety Code, commencing with §11000. (W&IC §11251.3; All-County Letter (ACL) No. 97-65, p. 5, October 29, 1997)

Those persons who have committed a drug-related felony after August 22, 1996, and have been convicted (including conviction based on a "guilty" or "nolo contendere" plea) as a drug felon in a state or federal court after December 31, 1997, shall be excluded from the AU as a matter of law. (§82-832.1(j), as renumbered from (k) effective February 28, 2002) Prior to May 1, 1999, the exclusion applied only when the drug-related felony occurred after August 22, 1996. (§82-832.20, effective July 1, 1998, and repealed effective May 1, 1999)

073-9
Counties must issue vouchers or vendor payments for at least rent and utilities when an otherwise mandatorily included person is determined to be a drug felon under W&IC §11251.3. However, this restricted issuance is not required when the excluded person is a fleeing felon. (All-County Letter No. 97-66, p. 5, October 29, 1997; W&IC §§11251.3 and 11486.5; §44-307.11, effective July 1, 1998)

073-10
State law provides that for purposes of determining the Maximum Aid Payment (MAP), and for no other purpose, the number of needy persons in the same family shall not be increased for any child born into a family that has received aid continuously for the 10 months prior to the birth of the child. Aid shall be considered continuous unless the family did not receive aid for two consecutive months. (W&IC §11450.04(a), see also §§44-314.2, .32, and .6)

In order for this section to apply, notification must be provided to applicants or recipients

in writing. "The notification required by this section shall set forth the provisions of this section and shall state explicitly the impact these provisions would have on the future aid to the assistance unit. This section shall not apply to any recipient's child earlier than 12 months after the mailing of an informational notice as required by this subdivision." (W&IC §11450.04(f))

073-10A
Under state regulations, in order for the Maximum Family Grant (MFG) limitations to apply, the AU must have "... received written notice of the MFG at least ten months prior to the birth of the child...." (§44-314.31)

In addition, if the AU has had a break in aid of at least two consecutive months during the ten months prior to the month of birth of the child, the MFG rule will not apply. (§44-314.32)

For MFG purposes, months in suspense (see §44-315.8) and months in which the AU was eligible for a zero basic grant (see §44-315.9) are considered months in which the AU did not receive aid. (§44-314.143, effective July 1, 2001, implementing the August 25, 2000 San Francisco County Superior Court, Class Action No. 310867, Settlement Agreement and Stipulation for Entry of Judgment in *Nickols* v. *Saenz*; All-County Letter No. 00-78, November 30, 2000)

073-11
State regulations provide that the MFG shall not apply when:

.51 Rape: The child was conceived as a result of an act of rape, as defined in Sections 261 and 262 of the Penal Code, and

.511 The rape has been reported to a law enforcement agency, medical or mental health professional or an organization that provides counseling to victims of rape prior to, or within three months after, the birth of the child.

(a) The recipient shall provide written verification from one of the entities listed above, that the incident of rape was reported and the date that the report was made.

.52 Incest: The child was conceived as a result of incest, as defined in Section 285 of the Penal Code, and

.521 Paternity has been established, or

.522 The incest has been reported to a law enforcement agency, medical or mental health professional or an organization that provides counseling to victims of incest prior to, or within three months after, the birth of the child.

(a) The recipient shall provide written verification from one of the entities listed above that the incident of incest was reported and the date the report was made.

.53 Contraceptive Failure: It is medically verified that the child was conceived as a result of the failure of:

.531 An intrauterine device, or

.532 Norplant, or

.533 The sterilization of either parent.

.54 Unaided Caretaker Relative: The child was conceived while either parent was an unaided nonparent caretaker relative.

.55 Not Living with Parent: The child is not living with either parent

(§44-314.5)

073-11A
Under state law, one reason the MFG limitations do not apply is because the child was "... conceived when either parent was a nonneedy caretaker relative." (W&IC §11450.04(d)(2))

073-11B
It is the position of the CDSS that if the parent of the child is living in the home but is not in the AU (ineligible alien, sanctioned or SSI parent) that MFG rules will apply, because the parent is receiving aid on behalf of her/his eligible child(ren). (All-County Letter No. 97-29, April 30, 1997 Attachment 1, #12)

073-11C
MFG rules shall not apply when a teen or former teen parent, who has met the age requirements in §42-101 at the time of the child's birth, establishes his or her own AU. When that new AU is established, the MFG rule shall not apply to any existing child of the teen or former teen parent, or to any child born to such parent during the first ten months after the new AU is established. (§44-314.56, as added effective July 1, 2001, implementing the *Nickols* v. *Saenz* court order of August 25, 2000)

073-12
The MFG child is eligible for and a recipient of aid, including special needs, and is included in the AU size for the MBSAC, but is not included in the AU size for purposes of determining the MAP. (§§44-314.2, .6)

073-12A

Effective April 1, 2001, the following payments shall be exempt income for CalWORKs grant computation purposes when the case is subject to the MFG rule:

1. Child support payments from the absent parent for the MFG child, no matter to whom the payment is sent.

2. Derivative benefits from Social Security of other government programs based on the absent parent's disability or retirement, paid to or on behalf of the MFG child, when those benefits satisfy, in whole or in part, the absent parent's child support obligation.

(All-County Letter No. 01-16, March 2, 2001, implementing the *Kehrer* v. *Saenz* court order; see also §44-314.62, amended effective July 1, 2001 and §44-314.621, added effective July 1, 2001)

073-13
In the Settlement Agreement in *Nickols* v. *Saenz*, CDSS agreed to do the following:

1. Revise the MFG informing notice to more clearly explain the application of the MFG rule.

   (a) CDSS will send the Revised MFG Informing Notice to all current recipients and county welfare departments (CWDs) in August 2000. [CDSS implemented this part of the agreement by issuing All-County Information Notice No. I-82-00, August 21, 2000.]

   (b) CDSS will direct CWDs to use the Revised MFG Informing Notice with the written acknowledgment to explain the MFG rule to recipients at redetermination and to applicants at application. CDSS will direct CWDs to have applicants and recipients complete the acknowledgment of receipt at the bottom of the Revised MFG Informing Notice, provide a copy of the signed Revised MFG Informing Notice to the applicant or recipient and retain a copy in the case file.

2. Issue an All-County Letter (ACL) no later than November 30, 2000. The MFG policy described in this paragraph and this ACL will be effective September 1, 2000. The ACL will instruct CWDs to apply the MFG rule as follows:

   (a) The MFG rule does not apply to a child born to a teen parent who met the age requirements in §42-101 at the time the child was born, if the assistance unit (AU) did not receive the Revised MFG Informing Notice ten months before the child was born. This may increase the grant for an AU containing a child subject to the MFG rule. The MFG rule will begin to be applied to a child born to a teen parent who meets the age requirements in §42-101, ten months after the Revised MFG Informing

Notice has been provided to the AU (approximately July 2001) if no other exemptions apply.

(b) The MFG rule will not apply to the child of a teen parent, who met the age requirement in §42-101 at the time the child was born, when the teen parent becomes the head of his or her own AU. When a teen who was aided as a dependent child establishes his or her own AU, the MFG rule will apply to any child born at least ten months after the teen is provided written notice of the MFG rule as provided in paragraph (1), if no other exemptions apply.

(c) Beginning November 1, 2001, the MFG rule will apply to an AU only if the county provided the Revised MFG Informing Notice at application, redetermination, through the August 2000 mass mailing or other date at least ten months before the birth of the child. Beginning November 1, 2002, the MFG rule will apply to the AU only if the case file contains a copy of an acknowledgment signed by the head of household that they received the Revised MFG Informing Notice, or other written acknowledgment signed by the head of household.

(d) An AU will not be considered to have ten continuous months on aid if they did not receive aid for two consecutive months. Months in which a family is eligible for a zero basic grant, as defined in §44-315.8 or suspense months, as defined in §44-315.9, will be considered a month in which the family did not receive aid, for purposes of the MFG rule.

(*Nickols* v. *Saenz*, San Francisco County Superior Court, Class Action No. 310867, Settlement Agreement and Stipulation for Entry of Judgment, August 25, 2000)

The CDSS issued an ACL in accord with the *Nickols* settlement agreement. This ACL included notices designed to implement that agreement. (ACL No. 00-78, November 30, 2000)

073-14
It is the policy of the CDSS that:

1. A "sanction" results when an individual is taken out of the AU for failure to comply with program requirements, e.g., a failure to meet work requirements or a refusal to assign support rights;

2. A "penalty" results when, because of noncompliance, the grant is reduced or the individual's needs are not considered in computing the grant, e.g., a parent's failure to provide documentation that his/her child is immunized or attending school regularly.

(All-County Information Notice No. I-09-98, February 9, 1998)

073-14A
Based on the CDSS distinction between a "sanction" and "penalty", the following rules apply:

1. Penalties occur, and the penalized person(s) is in the AU, when the parent(s) or caretaker relative fail to provide immunization documentation of nonschool-age children; the adult does not ensure regular school attendance of a child under 16, or the child is 16 or over and is not regularly attending school; the family grant is reduced 25% due to a custodial parent's failure to cooperate with the DA; the person has been found to have committed fraud; or the dependent child has failed to comply with work requirements.

2. Sanctions apply, and the sanctioned person is not in the AU, when the custodial parent or caretaker relative does not assign child support rights; the person is a fleeing felon or has violated a condition of probation or parole; the person is a drug felon; the adult has failed to comply with work requirements; or the person fails to participate in community service activities.

(All-County Information Notice No. I-09-98, February 9, 1998, Chart)

073-14B
When a person is "penalized", the person remains in the AU but does not have his or her needs considered. In determining eligibility for certain payments, the CDSS has interpreted this exclusion as follows:

(1) In Homeless Assistance (HA) cases, the cost of permanent housing must not exceed 80% of the AU without the penalized person, under §44-211.531.

(2) When the AU receives income in kind, the in-kind value does not include the penalized person's needs, under §44-115.3.

(3) When issuing a Reduced Income Supplemental Payment, payment is limited to 80% of the Maximum Aid Payment, excluding the penalized person, under §44-400.

(4) The penalized person is not eligible for a special need payment, under §§44-211.2-.4, and .6.

(All-County Letter No. 99-76, September 30, 1999)

073-15
Certain individuals shall not have their needs taken into account when determining the AU's financial eligibility and grant amount. Any resources or income of the disqualified individual shall be considered available to the AU. The length of the penalties is as follows:

- Six months for the first occasion of committing any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

- Twelve months for the second occasion of making false or misleading statements or misrepresenting, concealing, or withholding facts and/or the second occasion of committing any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

  Two years for felony fraud convictions for theft amounts less than $2,000 or the first occasion for submitting more than one application to receive simultaneous aid.

- Four years for the second occasion of submitting more than one application to receive simultaneous aid.

  Five years for felony fraud convictions of theft amounts of more than $2,000 but less than $5,000.

- Permanently for making fraudulent statements or representations regarding residence to receive assistance simultaneously from two or more states or counties.

- Permanently for submitting false documents for nonexistent or ineligible children.

  Permanently for receiving cash benefits fraudulently in excess of $10,000, or for conviction of felony fraud for theft of $5,000 or more.

- Permanently for the third fraud conviction in a state or federal court or the third occasion an administrative hearing decision determines the individual made false statements or concealed or withheld facts or committed any act to mislead misrepresent, conceal or withhold facts or propound a falsity.

- Permanently for the third occasion for submitting more than one application to receive simultaneous aid.

All such fraud findings shall be made by a federal or state court, or, in the case of the six-month, twelve-month, four-year, and certain of the permanent penalties (which have bullets next to them), pursuant to an administrative hearing.

(All-County Letter No. 97-69, October 29, 1997; All-County Information Notice No. I-09-98, February 9, 1998; W&IC §11486)

074-1A
A "parent" means the biological parent unless the child has been adopted or relinquished for adoption or parental rights have been terminated. If adoption occurs, the person who

adopts the child is the parent. When the biological parent's parental rights are terminated, the person is no longer a "parent" of the child, but the biological parent and his/her relatives (as defined in §82-808.11) are still considered "caretaker relatives" for purposes of 82-808.12. (§80-301p.(1))

074-2A
In order to be eligible for CalWORKs (formerly AFDC)-FG/U payments a child must be living in the home of a caretaker relative. (§82-804.1)

074-3A
The caretaker/relative of an eligible CalWORKs (formerly AFDC) child shall be related to the child as follows: The caretaker/relative may be any relative by blood, marriage or adoption who is within the fifth degree of kinship to the eligible child. This includes a parent, grandparent, sibling, great-grandparent, uncle or aunt, nephew or niece, great-great grandparent, great-uncle or aunt, first cousin, great-great-great grandparent, great-great uncle or aunt, or a first cousin once removed; or the stepfather, stepmother, stepbrother, or stepsister; or the spouse of any person named above, even after the marriage has been terminated by death or dissolution; or a person who legally adopts the child, or that person's relatives, as specified. (§82-808.1)

A second cousin is not a first cousin once removed, is not within the 5th degree of kinship, and thus does not qualify as an appropriate caretaker/relative. (All-County Letter No. 94-01, January 10, 1994)

074-3B
Federal regulations provide that: A child may be considered to meet the requirement of living with one of the relatives specified in the Social Security Act if his home is with a parent or a person in one of the following groups:

(1) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great- great.

(2) Stepfather, stepmother, stepbrother or stepsister.

(3) Persons who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with State law.

(4) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

(45 Code of Federal Regulations §233.90(c)(1)(v)(A))

074-3C

A caretaker relative is a relative who lives with a child who is part of the filing unit and exercises responsibility for the day-to-day care and control of the child. (§80-301c.) The caretaker relative may be any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the eligible child. (§82-808.1)

074-4
In cases where there is a question as to parentage, the matter should be referred to the District Attorney for resolution. (Section 41-403.2, referring to §43-201.1)

When an AFDC (now CalWORKs) applicant child is not living with both parents, and when the child's parents are unmarried and paternity has not been established by a court order, the matter is referred to the DA so that the DA may locate the absent parent(s), establish paternity, and/or obtain a child support order. (§§43-201.1 and .2)

The DA will not undertake to establish paternity or secure support in any case in which the caretaker relative has established good cause for failing to cooperate with the DA, unless there has been a determination that child support enforcement may proceed without the participation of the caretaker relative. (§43-201.17)

074-5
The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes except for actions brought pursuant to §270 of the Penal Code. (Handbook §41-403.21, referencing Civil Code (Civil Code) §7010(a))

Handbook §41-403.22 sets forth certain presumptions as to parentage from the California Codes. Civil Code §7004 (recodified as Family Code §7611, effective 1/1/94) provides that a man is presumed to be the natural father of a child if he meets the conditions set forth in Family Code §7540 or in any of the following subdivisions:

(1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court.

(2) He and the child's natural mother have attempted to marry each other before the child's birth, in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) If the attempted marriage could be declared invalid only by a court, the child by death, annulment, declaration of invalidity or divorce; or is born during the attempted marriage, or within 300 days after its termination

(ii) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(3) He and the child's natural mother have married or attempted to marry, after the child's birth, in apparent compliance with law, although the attempted marriage is or could be declared invalid, or

(i) He is named as the child's father on the birth certificate with his consent, or

(ii) He is obligated to support the child under a written voluntary promise or by a court order.

(4) He receives the child into his home and openly holds out the child as his natural child.

Except as provided in Family Code §7540, these are rebuttable presumptions, but they may be rebutted only by clear and convincing evidence. If two or more presumptions conflict, the presumption(s) which on the facts is founded on the weightier considerations of policy and logic controls. These presumptions are rebutted by a court decree establishing paternity of the child by another man. (Family Code §7612)

Family Code §7540 provides that the issue of a wife, cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage unless the court finds that the conclusions of all the experts, as disclosed by the evidence based upon blood tests performed pursuant to Family Code §7550 et seq., are that the husband is not the father of the child, in which case the question of the husband's paternity shall be resolved accordingly.

Health and Safety Code §10577(a) provides that any birth, fetal death, death or marriage record which was registered within a period of one year from the date of the event, or any copy of such record or part thereof, properly certified by the State or local registrar, or county recorder, is prima facie evidence in all courts and places of the facts stated therein.

075-1A
Two or more AUs in the same home shall be combined into one AU when a caretaker relative is married to another caretaker relative in another AU or two caretaker relatives in the home have separate children and also have an eligible child in common, or there is only one caretaker relative. (§82-824.1)

An "eligible child" is one who meets <u>all linking and nonlinking eligibility factors</u> [emphasis added] as defined in §40-107.3 and who is not excluded by law. (All-County Letter No. 94-01, January 10, 1994)

075-1D
The CDSS had been enjoined from requiring that AFDC eligible siblings and nonsiblings living with a single caretaker relative be in a single AU. (*Edwards* v. *Healy* (1993) 12 F. 3d 154, affirming *Edwards* v. *Healy* (1992) CIV-S-91)

The United States Supreme Court held that grouping such individuals into one AU did not violate federal law, and remanded the case to the Court of Appeals. (*Anderson* v. *Edwards* (1995) 115 S. Ct. 1291)

075-1E
Following the *Edwards* v. *Carleson* decision by the U.S. Supreme Court, the CDSS reinstated the policy of combining nonsibling AUs when there is only one caretaker relative. Current cases should have been combined effective August 1, 1995, and new cases were also to be combined as of that date.

Emergency regulations were issued effective August 1, 1995 which modified §82-824.13 to provide that two or more AUs in the same home shall be combined into one AU when there is only one caretaker relative. (All-County Letter No. 95-23, June 2, 1995)

075-2A
If a child stays alternately for periods of one month or less with each of his/her parents who are separated or divorced, in most circumstances the caretaker/relative is the parent with whom the child stays for the majority of the time. The temporary absence of the parent or the child from the home does not affect this determination. The parent with whom the child stays for less than the majority of the time may be the caretaker/relative, if the parent can establish that he or she has majority responsibility for the care and control of the child. When the child spends an equal amount of time with each parent and each parent exercises an equal share of care and control responsibilities, the parent who applies for aid shall be the caretaker/relative provided that the child's other parent is not currently applying for or receiving aid for the child. (§82-808.4)

075-2B
When each parent exercises an equal share of care and control responsibilities, and each has applied for aid, the caretaker/relative shall be determined in the following order:

(a) The parent designated as the primary caretaker for purposes of public assistance, by a court order, pursuant to Civil Code §4600.5(h), revised to Family Code §3086, effective 1/1/94.

(b) The parent who would be eligible for aid, when there is no court designation.

(c) The parent designated by mutual agreement when both parents would be eligible.

(d) The parent who first applied for aid, when the parents cannot mutually agree.

(§82-808.413)

075-2C
When a child stays alternately for periods of one full calendar month (as defined in §82-812.5) or more with different persons who are not living together, the caretaker relative

shall be the person with whom the child is staying at the time. That person will have to apply for aid on behalf of the child. (§82-808.42, effective May 1, 1997)

It is the position of the CDSS that, in joint custody situations, (despite the fact that §82-808.413 remains unchanged) children who alternate living arrangements of more than one full calendar month can no longer be considered temporarily absent from the home of the caretaker relative of the child. (All-County Letter No. 97-14, March 11, 1997)

075-2D
For purposes of §§82-808.4 and 82-812.5, "one full calendar month" shall be from the first of the month through the last day of the month. (§82-812.51) If the individual has been absent for the entire month, but less than 30 days, the calendar month is not completed until the individual has been absent for 30 days. (§82-812.51(a))

Based on the above, if an individual leaves for a visit on February 2, and returns on March 16, the individual has not been gone for one full calendar month. (Handbook §82-812.52(a)) Likewise, an individual who leaves on February 1 (in a nonleap year) has not been gone for one full calendar month until March 3. (Handbook §82-812.52(c))

075-3
As of January 1, 1999, state law provides that if two or more AUs reside in the same home, they shall be combined into one AU in the following instances:

(1) There is a common caretaker relative for the eligible children.

(2) One caretaker relative marries another caretaker relative.

(3) Two caretaker relatives are the parents of an eligible child.

(W&IC 11450.16(e), effective January 1, 1999)

076-1A
The "home of a caretaker relative" is a family setting maintained or in the process of being established. A home exists so long as the relative assumes responsibility for the care and control of the child. An eligible child is considered to be living in the home of a caretaker relative even though the child and/or the relative is temporarily absent from the home. However, the caretaker relative must continue to have the responsibility for care and control of the child during the temporary absence. Examples of temporary absence, prior to May 1, 1997, included hospitalization, attendance at school, visiting, vacationing, moving, trips made in connection with current or prospective employment, and similar situations. (§§82-804.2, and 82-812, modified effective May 1, 1997)

076-1B
Any member of the AU shall be considered temporarily absent from the home when the absence is one full calendar month or less. For purposes of this section, one full calendar month shall be from the first of the month through the last day of the month, but the

calendar month shall not be deemed completed until the individual has been absent for at least 30 days. (§82-812.51, effective May 1, 1997)

For purposes of §§82-808.4 and 82-812.5, "one full calendar month" shall be from the first of the month through the last day of the month. (§82-812.51) If the individual has been absent for the entire month, but less than 30 days, the calendar month is not completed until the individual has been absent for 30 days. (§82-812.51(a))

Based on the above, if an individual leaves for a visit on February 2, and returns on March 16, the individual has not been gone for one full calendar month. (Handbook §82-812.52(a)) Likewise, an individual who leaves on February 1 (in a nonleap year) has not been gone for one full calendar month until March 3. (Handbook §82-812.52(c))

076-2
Under federal regulations, a home is the family setting maintained or in the process of being established, as evidenced by assumption and continuation of responsibility for day-to-day care of the child by the relative with whom the child is living. A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting. Within this interpretation, the child is considered to be living with the relative even though: He or she is under the jurisdiction of the court and receiving probation services or protective supervision; or legal custody is held by an agency that does not have physical possession of the child. (45 Code of Federal Regulations (CFR) §233.90(c)(1)(v)(B))

076-3
When a child stays alternately for periods of one full calendar month or more with different persons who are not living together, the person with whom the child is staying is eligible, if otherwise an appropriate caretaker relative, to apply for aid on behalf of the child. (§82-808.42, effective May 1, 1997)

076-5
Exceptions which permit a finding of temporary absence, even where an AU member is absent from the home for one full calendar month or more, include:

.62 A child in a public hospital, for up to two full calendar months.

.63 A person hospitalized (other than a child in a public hospital) for the duration of the hospital stay. Hospitalization includes a stay in a medical hospital, psychiatric care facility, or drug or alcohol rehabilitation treatment facility.

.64 A person who is employed, for the duration of the employment/job activity.

.65 A person attending an institution of higher learning, an educational school leading to a high school diploma or equivalent, or a vocational school leading to employment, for the duration of the schooling or training, if there is no such

school within the vicinity of the person's home which provides the education or training.

.66 A child attending a school which meets the special needs of the child, for the duration of the schooling, when the child has an Individualized Education Plan (IEP), and no school which meets the child's needs (as described in the IEP) is located close enough for the child to live at home and attend the local school.

.67 A child in a licensed home due to a crisis situation, for the duration of the crisis, when the licensed home does not receive AFDC-FC for the child, and the caretaker relative has care and control concerning health and welfare decisions.

(§82-812.6)

076-6
Any member of the AU shall be considered temporarily absent when absent from the home for one full calendar month or less. (§82-812.5, effective May 1, 1997) The CDSS interpretation of §82-812.5 is that when an AU member is absent for more than one calendar month (as defined in §82-812.51), that individual is no longer eligible for aid unless he/she meets one of the exceptions set forth in §82-812.6. (All-County Letter No. 97-14, March 11, 1997; Handbook §82-812.52(b))

077-1
A never-married minor under the age of 18, who is pregnant or who has a dependent child in his/her care shall reside:

.11 With a senior parent; or

.12 With a legal guardian; or

.13 With a “related” individual (as specified in §82-808.1) who is at least 18 years old; or

.14 In a state licensed adult-supervised supportive living arrangement, including but not limited to a group or maternity home.

(§89-201.1, effective May 1, 1997)

The minor parent is exempt from the above requirement when the minor parent:

.21 Has no living parent or legal guardian; or

.22 Has no parent or legal guardian whose whereabouts are known; or

.23 Has no parent or legal guardian who will allow the minor parent to live in his/her home; or

.24 Would have his/her or his/her dependent child's physical or emotional health or safety jeopardized (as determined by a child protective service worker) if living in the home of the minor's parent, legal guardian, or other adult relative; or

.25 Has lived apart from the minor's parent or legal guardian for at least 12 months prior to the month of the youngest dependent child's birth, or the application for aid; or

.26 Is legally emancipated.

(§89-201.2, effective May 1, 1997)

077-1A
For CalWORKs (formerly AFDC) eligibility purposes, a "minor parent" is defined as a parent or pregnant woman who is less than 18 years of age. (§80-301m.(3)) For purposes of §89-201, which implements the CalWORKs Teen Pregnancy Disincentive plan set forth in W&IC §11254, a "minor parent" is a never-married minor, under the age of 18, who is pregnant or has a dependent child in his/her care. (§89-201.1) And for purposes of the Child Welfare Services program, a "minor parent" is defined as anyone under the age of 18 who is either pregnant or the custodial parent of a child and who has never been married. (§31-002(m)(3))

077-2
Prior to March 31, 2003, state regulations provided that:

> When the minor parent lives with his/her parent(s), senior parent income shall be "considered" (formerly "deemed") per §44-133.52. When such income results in ineligibility of the minor's AU:
>
> .511 The minor parent shall be ineligible and excluded from the AU.
>
> .512 Senior parent income shall not be considered available (formerly deemed) to the minor parent's child(ren).
>
> .513 The income eligibility of the minor parent's child(ren) shall be determined per §§44-207.2 and .3.
>
> .514 The minor parent's income shall be considered available to his/her child(ren)'s AU using the excluded parent computation.

(§89-201.5, effective May 1, 1997, revised effective July 1, 1998, and repealed effective March 31, 2003)

077-2A

For CalWORKs eligibility and grant determination purposes, any child support paid to a senior parent on behalf of a minor parent, who resides with the senior parent, shall not be included as minor parent income in the "excluded parent computation" set forth in §89-201.514. (All-County Letter No. 01-15, February 28, 2001 implementing the *Dominika S.* v. *Saenz* court order, effective with the February 1, 2001 grant computations and eligibility determinations)

077-3
Prior to March 31, 2003, state regulations provided that:

> When senior parent income, per §44-133.52, does not result in ineligibility of the minor, and the minor parent is eligible to be in the AU with his/her child(ren), or is eligible to be included in the senior parent's AU, then:
>
> > Senior parent income shall be considered, and the AU's grant amount shall be the greater of:
> >
> > (a) The actual grant amount, per §44-315.3, replaced by W&IC §11451.5 effective January 1, 1998; or
> >
> > (b) The MAP for the minor parent's child(ren).

(§89-201.53, as revised effective July 1, 1998, and re-revised effective March 31, 2003)

077-4
Prior to July 1, 1998, state regulations provided that: When a minor parent and his/her child(ren) are included in the senior parent's AU, the grant for the AU shall be the greater of:

.61 The grant, per §44-315.3, or

.62 The MAP for the minor's child(ren).

(§89-201.6, repealed effective July 1, 1998, and incorporated as part of §89-201.5)

077-5
For exceptions to the mandatory inclusion requirements applicable to pregnant or parenting minors who are participants in the California Work Pays Demonstration Project, the rules in §89-201.5 govern. (Handbook §82-820.333)

077-6
When the minor parent is not exempt from the Minor Parent Requirement, aid shall be paid on behalf of the minor parent to the adult living in the home, or to the group maternity home, per §89-201.1. (§89-201.4)

077-7

When the minor parent who is not exempt from the Minor Parent Requirement refuses or fails to cooperate in obtaining verification of the adult's consent or refusal to act as payee on his/her behalf, the minor parent's AU is ineligible for CalWORKs (formerly AFDC). (§89-201.42)

077-8
It is the position of the CDSS that when a minor parent is living with a senior parent, exempt AU status can be established as follows:

1. If the minor parent (whether excluded or included in the AU) is the only caretaker relative in the AU, only the minor parent must meet the exemption criteria.

2. If both the senior parent and the minor parent are included in the AU, both must meet exemption criteria.

(All-County Letter No. 97-17, March 14, 1997)

077-9
When two minor parent siblings who live with their senior parent apply for aid, separate eligibility is established for each minor parent's AU based on half of the senior parent's income assumed available for deeming purposes, plus the minor's income. (All-County Letter No. 97-17, March 14, 1997)

078-1
The income of the parent (natural or adoptive) of an eligible child, and the income of the spouse of that parent, as well as the income of the eligible child's siblings who live in the child's home, plus the income of the applicant or recipient, shall be considered available for purposes of eligibility determination and grant computation. (W&IC §11008.14, effective January 1, 1998)

078-2
Each Kin-GAP child is in his or her own AU, even if there is a sibling or a needy caretaker relative living in the same home. (All-County Letter (ACL No. 99-97, November 4, 1999; §90-105.31, effective July 10, 2000)

The Kin-GAP recipient is excluded by law from receipt of CalWORKs (W&IC §11450(j)) and the income and aid payment of the Kin-GAP recipient is not considered available to CalWORKs applicants and recipients. (W&IC §11371) The needy caretaker relative of the Kin-GAP recipient may be in his/her own one-person AU, or included in an AU with other eligible dependent children. (W&IC §11450.16(B); §82-820.22, effective July 1, 2000) These rules are effective January 1, 2000. (ACL No. 99-92, October 25, 1999)